IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4619 OF 2006

Bombay Craft Printers ..Petitioner

vs

Mansoor Abbas Lokhandwala and anr. ..Respondents.

Mr.S.A. Sawant for petitioner.
Mr. P.S. Dani with Mr. J.P. Thakkar for respondent no.1.

CORAM: B.H. MARLAPALLE, J.

Date : March 29, 2007.

P.C.:

1. Heard Mr. Sawant the learned counsel for the petitioner and Mr. Dani with Mr. Thakkar for the respondent no.1.

2. The respondent-plaintiff has filed R.A.E. Suit No. 244/565 of 2005 for the recovery of vacant and peaceful possession of the suit premises, namely, K-Shed, Ground Floor, Universal Paint Compound, Military Road, Marol, Andheri (E), Mumbai 400 059. In the said suit an application at Exh.6 was taken out for temporary injunction restraining the defendants

from transferring, encumbering, sub-letting, giving on leave and licence or inducting in any manner or parting with the possession and using the suit premises or any part thereof for the purpose other than running a light factory and for the appointment of Court Commissioner. The learned Judge of the Small Causes Court by his order dated 25/1/2006 made the said notice absolute in terms of prayer clause (a) and directed the defendants, their servants, agents and any person on behalf of them not to transfer, encumber, sub-let or give on leave and licence basis or induct in any manner whatsoever or part with the suit premises or any part thereof. In addition, the defendant no.1 has been restrained temporarily from using the premises or any part thereof for the purpose other than running a light factory therein. This order was challenged in Appeal No. 67 of 2006 which has been dismissed by the Appellate Bench of the Small Causes Court on 28/4/2006.

3. The learned counsel for the petitioner mainly contended that when the premises have been let out for running a light factory, using the suit premises as a

godown or warehouse by defendant no.2 as the customer of defendant no.1 would not prima facie act in breach of the agreement. The agreement dated 5/4/1980 is placed and clause 3 therein states that defendants will use the suit premises for the purpose of running a light factory and will not install any heavy machineries therein without prior permission from the landlord. It is, therefore, prima facie the case of the plaintiff that there was a user change and, therefore, the restraining order in that regard passed by the trial court and confirmed by the Lower Appellate Court does not call for any interference in a petition under Article 227 of the Constitution.

4. The petition is, therefore, summarily rejected. By way of clarification it is to be noted that the suit will have to be decided on its own merits and without being influenced by any observations made in the interlocutory order.

(B.H. Marlapalle,J.)